

FLAT REFUSALS FOR LOCAL LANDLORDS

27 January 2010 – Local landlords are finding it considerably harder to gain possession of their properties than at any other time, due to an increase in regulation and a pro-tenant bias being taken by some courts, says solicitor Chris Stanbury of Herrington & Carmichael LLP.

"Many landlords of residential properties are simply unaware of the full workings of the tenancy deposit scheme, and this is where they are coming unstuck when seeking an order for possession.

Landlords can often fail to register the initial deposit they receive and overlook giving the tenant, within 14 days of receiving the deposit, details about how that deposit is protected. The landlord then runs the risk of a counterclaim from the tenant of three times the amount of the deposit which can reduce or cancel any rent arrears and possibly neutralise the claim for possession," explains Chris.

Chris emphasises the need for accuracy on all documents that the landlord serves on the tenant:

"If the notice to quit that the landlord serves on the tenant is one day wrong then the claim will be dismissed at the hearing with the possibility of an order that the landlord pay the tenant's costs. Similarly, a notice alleging rent arrears or anti-social behaviour must be accurate in all respects or it will fail. Beware also of any tenant bringing a counterclaim alleging failure to carry out repairs to the structure and services which can have the effect of diminishing the apparent rent arrears being claimed."

Chris continues:

"It's unfortunate for landlords but the courts are also taking an increasingly pro-tenant stance and tenants are often gaining public funding (legal aid) to enable them to defend proceedings on technical grounds such as the previously mentioned defects in landlords' notices."

Some landlords are also unaware of the rules on Energy Performance Certificates (EPCs), gas safety certificates and electricity regulations. A landlord can be fined for not having an EPC. An injury or death caused by failure to comply with gas safety and electricity regulations can result in a criminal prosecution.

Given all of these difficulties it is important that landlords obtain legal advice and guidance on the tenancy agreement right from the outset, and certainly before taking any steps to gain possession:

"At Herrington & Carmichael we specialise in this area and have considerable experience in obtaining orders for possession and evicting tenants. Provided we have control of the case from the outset - so that we can draft and serve the requisite notices - we never experience any difficulty in obtaining an order for possession," advises Chris.

"We are offering landlords and agents a free half hour of advice. The half hour will not only look at possession proceedings but can offer a health check on the landlord's legal obligations under the tenancy."

Chris can be contacted on 01276 686222 or at chris.stanbury@herrington-carmichael.com

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Editor's notes:

About Herrington & Carmichael LLP

Herrington & Carmichael is a well established law firm providing an extensive range of services to business and private clients. An experienced team of 80 staff and lawyers operate from offices in Camberley and Wokingham with an enviable reputation for practical, cost-effective legal advice.

For further information on the firm's services please visit www.herrington-carmichael.com

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